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Assistant County Clerk

September 26, 2003

Commission on State Mandates
980 Ninth Street, Suite 300,
Sacramento, CA 95814

RECEIVED

OCT 01 2003

**COMMISSION ON
STATE MANDATES**

RE: COUNTY OF SAN BERNARDINO'S SB 90 TEST CLAIM

Attached please find County of San Bernardino's SB 90 test claim, which alleges the existence of state mandated costs in the following statute:

Chapter 260, Statutes of 2000 (Senate Bill No. 414): Voter Identification Procedures
– Elections Code Section 14310.

If you have any questions, please call me at (909) 386-8850.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Ter Keurst".

Bonnie Ter Keurst
Reimbursable Projects Section Manager

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2/91)

TEST CLAIM FORM

For Official Use Only

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OCT 01 2003

**COMMISSION ON
STATE MANDATES**

Local Agency or School District Submitting Claim

Claim No. 03-TC-23

COUNTY OF SAN BERNARDINO

Contact Person

Telephone No.

BONNIE TER KEURST

(909) 386-8850

Address

OFFICE OF THE AUDITOR/CONTROLLER-RECORDER
222 W. HOSPITALITY LANE, SAN BERNARDINO, CA 92415-0018

Representative Organization to be Notified

None

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Chapter 260, Statutes of 2000 (Sections 1 & 2): Elections Code Section 14310

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

BONNIE TER KEURST
REIMBURSABLE PROJECTS MANAGER

(909) 386-8850

Signature of Authorized Representative

Date

Bonnie Ter Keurst

Sept 26, 2003

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of
County of San Bernardino

VOTER IDENTIFICATION PROCEDURES

Chapter 260, Statutes of 2000

STATEMENT OF THE CLAIM

INTRODUCTION

On January 1, 2001, Chapter 260, Statutes of 2000 (Senate Bill No. 414) became operative (Exhibit A). This legislation amended Section 14310 of the Elections Code by requiring local elections official to identify voters casting provisional ballots by comparing the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration through applying the procedures used in comparing the signatures on absentee ballots. If the elections official determines that the signature does not match as specified, the cast provisional ballot is rejected entirely. The workload increase resulting from the mandated signature comparison for voter identification purpose has resulted in the development of additional procedures and increased labor costs for the local agencies working to provide higher level of service imposed by the State as defined in Section 14310 of the Elections Code.

A. MANDATE SUMMARY

The Elections Code, Section 14310, requires that whenever in any elections a voter is claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct, or upon examination of the county elections official's records on file, the voter is entitled to cast a provisional ballot. After the ballots are cast, the elections official examines the records with respect to all provisional ballots cast during the official canvass.

Chapter 260, Statutes of 2000 (SB 414) amended Section 14310 of the Elections Code. As of January 1, 2001 Section 14310 requires the county elections official to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration by using the procedures that apply to the comparison of signatures on the absentee ballots.

Elections Code Section 14310 reads, in pertinent part:

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot

**Test Claim of County of San Bernardino
Voter Identification Procedures**

envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

Article XIII B, Section 6 of the California Constitution requires reimbursement whenever the State mandates local governments to implement and deliver services that constitute a "new program or higher level of service". The higher level of service for casting provisional ballots occurred when the State required the local elections official to compare and verify signatures on provisional ballot envelopes and voters' affidavit of registration using the signature-comparison procedures applied to absentee ballots. The requirement of comparison of signatures between provisional ballot envelope and voter's affidavit of registration constitutes a higher level of service upon local agencies.

In order to be reimbursable, the mandated legislation must be enacted by the State after 1975, per Article XIII B, Section 6 of the California Constitution. Since the legislation mandating the provisional ballot signature comparison with the voter's affidavit of registration was enacted in 2000, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

Prior to the enactment of Chapter 260, Statutes of 2000, the county elections official was not legally required to perform provisional ballot signature comparison for voter identification purposes. The elections official was only required to examine the records, and establish the provisional ballot-casting voter's right to vote. Enactment of this statute has increased the duties of the county elections official, and requires the official to provide a higher-level of service for an existing program. Within the meaning of Section 6 of Article XIII B of the California Constitution, any costs incurred that are direct result of providing "higher level of service of an existing program" are reimbursable by the State to the local agencies incurring those costs.

In order to manage the increased workload imposed by this mandate, the County Registrar of Voters (ROV) has developed additional procedures and increased the staffing-level to meet the new voter identification requirements of Chapter 260, Statutes of 2000 (SB 414). The County of San Bernardino does not have the authority to charge fees to voters to recover these increased voter identification costs. Therefore these costs are deemed to be mandated and reimbursable by the State to the local agencies incurring these costs.

The identification of provisional ballot-casting voters by comparing their signatures on the provisional ballot envelopes with the signatures on the voters' affidavit of registration constitutes a higher level of service. Counties were not required to perform this service before the enactment of the statute, which is this test claim's subject. Since the signature comparison requirement became effective on January 1, 2001, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

**Test Claim of County of San Bernardino
Voter Identification Procedures**

Section 2 of the Chapter 260, Statutes of 2000 (SB 414) reads as follows:

Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

B. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

Chapter 260, Statutes of 2000

An act to amend Section 14310 of the Elections Code relating to the voter identification procedures:

Elections Code, Section 14310 (c) (1) – provides that elections official compare the signature of each provisional ballot envelope with the signature on the voter's affidavit of registration using the procedures applied in absentee ballot signature comparison. If the signatures do not match as specified, the ballot should be rejected.

C. COST ESTIMATES

The costs fall into two categories: a) new workload costs, and b) administration costs.

There are no cost savings to the counties attributable to Chapter 260. The counties are unable to raise fees to pay for these costs, and they cannot reduce or lower the quality or availability of services. The costs are not subject to the funding disclaimers specified in Government Code Section 17556.

All of these mandated activities arise from Elections Code Section 14310 (Exhibit A), and will result in increased cost to local governmental entities in excess of \$1,000 per fiscal year.

D. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of San Bernardino as a result of the statutes included in the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B Section 6 of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated

**Test Claim of County of San Bernardino
Voter Identification Procedures**

by the State”, and specifies the following three requirements:

1. There are “increased costs which a local agency is required to incur after July 1, 1980.”
2. The costs are incurred “as a result of any statute enacted on or after January 1, 1975.”
3. The costs are the result of “a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution”.

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

E. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these statutes clearly meets both tests that the Supreme Court created in the *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program. The two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the “unique to government” test and the “carry out a state policy” test. The tests’ application to this test claim is discussed below.

Mandate is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Counties, rather than public/private entities, are responsible for administering the provisional ballot casting, and comparing the voter signatures on the provisional ballot envelopes and the voters’ affidavit of registration. This mandate only applies to the local government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the State intended that the local elections official identify provisional ballot casting voters by comparing their signatures on the provisional ballot envelopes with the signatures on the voters’ affidavit of registration. Prior to the enactment of the Chapter 260, Statutes of 2000, comparison of voter signatures by the elections official was not a requirement by the State.

Both of these tests are met.

**Test Claim of County of San Bernardino
Voter Identification Procedures**

F. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. **None of the seven disclaimers apply to this test claim.**

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs, which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties, which were expressly included in a ballot measure approved by the voters in a statewide election.
7. The statute² created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the County of San Bernardino's test claim.

G. CONCLUSION

The enactment of Chapter 260, Statutes of 2000 imposed a new state mandated program and cost on the County of San Bernardino, by requiring the elections official to compare signatures on provisional ballot envelopes with the signatures on the voters' affidavit of registration for voter identification purposes.

**Test Claim of County of San Bernardino
Voter Identification Procedures**

The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement has any application to this claim.

Government Code Section 17514 defines "costs mandated by the state" as:

"Any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The activities required by the Elections Code as added or amended or both by the statute of this test claim, result in increased costs that local agencies were required to incur after July 1, 1980, as a result of a statute enacted on or after January 1, 1975.

Therefore, based on the foregoing, the County of San Bernardino respectfully requests that the Commission on State Mandates determine that Chapter 260, Statutes of 2000, impose reimbursable state-mandated costs for the increased voter identification procedures pursuant to Section 6 of Article XIII B of the California Constitution.

H. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit A: Chapter 260, Statutes of 2000

**Test Claim of County of San Bernardino
Voter Identification Procedures**

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 26th day of September, 2003, at San Bernardino, California, by:



Bonnie Ter Keurst
Reimbursable Projects Manager
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Phone: (909) 386-8850
Fax: (909) 386-8830

EXHIBIT

A

Senate Bill No. 414

CHAPTER 260

An act to amend Section 14310 of the Elections Code, relating to elections.

[Approved by Governor August 25, 2000. Filed with
Secretary of State August 28, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 414, Knight. Voting procedures: voter identification.

Existing law requires that, at all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon specified examination is entitled to vote a provisional ballot. During the official canvass, existing law requires the elections official to examine the records with respect to all provisional ballots cast.

This bill would further require the elections official to compare the signature of each provisional ballot envelope with the signature on the voter's affidavit of registration. The bill would require that if the signatures do not compare, as specified, the ballot would be rejected.

This bill would impose a state-mandated local program by imposing new duties on local elections officials.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters.

(3) A precinct board member shall notify the voter of the contents of this subdivision at the time of receiving the provisional ballot of the voter.

(4) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official, provided the ballot cast by the voter contained only the candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct.

(d) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(e) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.

(f) Any existing supply of envelopes marked "special challenged ballot" may be used until the supply is exhausted.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.